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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1948.

PENNSYLVANIA-CENTRAL AIRLINES CORPORATION,
Petitioner,

vs.

MARJORIE SHOAF DUSKIN, Executrix of the Last Will and Testament of Delmar D. Duskin, Jr., Deceased,
Respondent.

No. 239.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petition for certiorari raises only two narrow questions of construction: (1) Of one section of the Pennsylvania Workmen's Compensation Act; (2) of a contract between Duskin, the deceased co-pilot, and his airline employer.

In view of the restricted range of the questions at issue, the inflated claims of importance to "every interstate airline company," "every member of the flying personnel of

every interstate airline company," "every person in the United States engaged in interstate transportation" (Petition for Certiorari and Brief, pp. 4-5), which are urged as reasons for the allowance of the writ, become nonpersuasive to the exercise by this Court of its discretionary power of review.

Since the limited questions passed upon by the Circuit Court of Appeals were correctly decided by it, since the action of the Circuit Court of Appeals in reversing the District Court could properly have been bottomed on a determinative rule of law, decisive of each issue presented, and since the questions presented are unsubstantial, the writ of certiorari should not be granted.

OPINIONS OF THE LOWER COURTS.

Duskin v. Pennsylvania-Central Airlines Corp., 167 F. (2d) 727 (C. C. A. 6th, Apr. 14, 1948);
Duskin v. Pennsylvania-Central Airlines Corp., 71 Fed. Sup. 867 (W. D. Tenn., Mar. 18, 1947).

JURISDICTION.

The statement of petitioner as to the basis of jurisdiction (Petition for Certiorari and Brief, p. 5) is not challenged.

STATEMENT OF THE CASE.

There are significant omisions in petitioner's Statement of the Matter Involved (Petition for Certiorari and Brief, p. 2 et seq.), which for accuracy and completeness is supplemented as follows:

Duskin was employed as a co-pilot by defendant on October 11, 1945 (R. p. 30). The contract of employment was entered into, not in Pennsylvania, but at Washington National Airport, Washington, D. C. (R. pp. 30, 45), the principal office of defendant (R. p. 29). Defendant is not a Pennsylvania corporation; it is a Delaware corporation (R. pp. 25, 28, 30). When so employed, Duskin was not domiciled in Pennsylvania; he was domiciled in Oklahoma. His temporary residence was not in Pennsylvania, but in Tennessee (R. p. 46).

Duskin thereupon was assigned to duty, not in Pennsylvania, but at LaGuardia Airport, New York City (R. p. 21), where he received his pay, and which was his base of operations (R. pp. 21, 30). Duskin and plaintiff lived together in New York while he was engaged in his employment and until his death (R. p. 21).

Duskin's duties consisted of acting as co-pilot out of LaGuardia Airport, New York, on interstate passenger flights over established routes of defendant (R. p. 21). On these flights Pittsburgh, Pennsylvania, was the junction point (R. p. 30). On flights such as from New York to Chicago via Pittsburgh and Detroit, or New York to Birmingham via Pittsburgh, Knoxville and Chattanooga (R. pp. 21-22), Duskin flew over the whole length of the State of Pennsylvania (R. p. 31).

On an interstate flight originating in New York, Duskin suffered injuries, in an airplane crash at Birmingham, Alabama, from which he died (R. pp. 26, 28, 29).

Duskin was not a resident of Pennsylvania, nor domiciled there at the time of his employment or his death. Defendant is not a Pennsylvania corporation. The principal office of defendant is not located in Pennsylvania. Duskin was not employed in Pennsylvania nor was he stationed there. He was not paid in Pennsylvania. His fatal injuries did not occur in Pennsylvania. His only connection with Pennsylvania was to fly across the State from New York, his base, and make stops at Pittsburgh as a junction point.

ARGUMENT.

The Circuit Court of Appeals Properly Construed the Pennsylvania Workmen's Compensation Act, by Its Terms, as Not Applying to the Alabama Death of Duskin.

The Pennsylvania Workmen's Compensation Act does not generally cover extra-state injuries.

> "Unlike the compensation laws of some other states, ours is predicated on the general principle that only accidents within the Commonwealth are compensable. Out of the general principle the Legislature has carved an exception for the benefit of those 'temporarily beyond the territorial limits of the Commonwealth.' "
>
> **Koeppel v. Royal Clothing Co.**, 150 Pa. Super. 610, 29 Atl. (2d) 241, at 242 (1942).

The statutory provision is:

> "Article I, Sec. 101. That this Act shall be called and cited as The Pennsylvania Workmen's Compensation Act, and shall apply to all accidents occurring within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed or extended, and shall not apply to any accidents occurring outside of the Commonwealth, except to accidents occurring to Commonwealth employes outside the Commonwealth while such employes are engaged in duly authorized business of the Commonwealth, and except accidents occurring to Pennsylvania employes whose duties require them to go temporarily beyond the territorial limits of the Commonwealth, not over ninety days, when such employes are performing services for employers whose place of business is within the Commonwealth" (Pennsylvania Law, 281, approved June 2, 1915, as amended).

The interpretation by the Circuit Court of Appeals of the Act as not applying to the Alabama death of Duskin under the facts presented by this record is in accord with the holdings of the Pennsylvania courts.

Lutz v. State Workmen's Insurance Fund et al., 124 Pa. Super. 149, 188 Atl. 364 (1936);

Salkind v. Penn. Threshermen etc. Ins. Co., 335 Pa. 326, 6 Atl. (2d) 301 (1939);

Stewart v. Thomas Earle & Sons, Inc., 150 Pa. Super. 591, 29 Atl. (2d) 239 (1942).

It is likewise in accord with accepted principles of the Conflict of Laws:

Restatement of Law, Conflict of Laws, Sec. 400:

> "**Neither Employment Nor Injury in State.** No recovery can be had under the Workmen's Compensation Act of a state if neither the harm occurred nor the contract of employment was made in the state."

The Circuit Court of Appeals Properly Construed the Contract of Employment Between Duskin and the Airline as Not Making the Pennsylvania Workmen's Compensation Act Applicable to the Alabama Death of Duskin.

The mimeographed form contract between Duskin and the Airline, prepared by the Airline, contained this provision:

> "All the rights and obligations of the parties hereto shall be governed by the laws of the State of Pennsylvania, including the Workmen's Compensation Act of Pennsylvania" (R. p. 15).

The Circuit Court of Appeals properly held that this language "does not provide that, in case of accident, appellee (the Airline) will pay the amounts provided in the Pennsylvania Compensation Act."

The petition for certiorari contends that in reaching its conclusion the Circuit Court of Appeals failed to apply settled rules of contract interpretation.

As against the inapplicable general rules of law elaborated in the petition for certiorari, the following applicable principles of contract interpretation emphasize the correctness of the result reached by the Circuit Court of Appeals:

> "Our duty is not to make contracts for the parties, but to administer them as we find them. Parties must take the consequences both of what is stipulated and of what is omitted. We can neither detract from one nor supply the other."
>
> **Osborn v. Nicholson,** 13 Wall. 654 (1872).

> "Parties are presumed to know the force and effect of the language in which they have chosen to embody their contracts, and to refuse to give effect to such language might result in artfully misleading others who had relied upon the words being used in their ordinary sense. In construing contracts words are to receive their plain and literal meaning, even though the intention of the party drawing the contract may have been different from that expressed. A party to a contract is responsible for ambiguity in his own expressions, and has no right to induce another to contract with him on the supposition that his words mean one thing while he hopes the court will adopt a construction by which they would mean another thing more to his advantage. Clark, Contracts, p. 593."
>
> **Calderon v. Atlas Steamship Company,** 170 U. S. 272 (1889).

> "The mental purpose of one of the parties to a written contract cannot change its terms."
>
> **New York Central R. R. Co. v. Mohney,** 252 U. S. 152 (1920).

Where a contract has been prepared by a party:

> "The rule is that when in such case the language requires construction, it shall be taken most strongly against the party making the instrument."
>
> **Orient Mutual Ins. Co. v. Wright,** 1 Wall. 456 (1864).

As against the technical presumption that all persons are presumed to know the law, which petitioner cites in its petition for certiorari, there rather should be indulged on the record in this case a factual presumption that Pennsylvania-Central Airlines Corporation had available at its home office in Washington, D. C., when it presented to its prospective employee, Duskin, printed and mimeographed forms of contracts to sign, competent and able legal counsel who could properly embody in its forms the terms and provisions intended and sought to be made enforceable, or that the corporation had it within its power to procure such counsel, and that the failure of these printed and mimeographed forms to spell out an obligation on the part of the corporation to pay the amounts provided in the Pennsylvania Workmen's Compensation Act in the event of injury or death of the prospective employee, indicates that no such obligation was intended to be created. No such obligation was expressed; no secret or unexpressed intent is germane; and if there is any doubt as to the construction to be given to the contract, it must be construed most strongly against the corporation.

To have construed the contract in accordance with the contention of petitioner, the Circuit Court of Appeals would have been forced to ignore the plain language of the contractual provision expressly making applicable not the Pennsylvania Workmen's Compensation Act alone, but all "the laws of the State of Pennsylvania"—which laws, of course, include the Pennsylvania rules of conflict of laws,

and by which the rights of the parties in this case would be governed by the laws of the State of Alabama, which the law of Pennsylvania makes applicable.

See:

Mannsz v. MacWhyte Co., 155 F. (2d) 445, at 449 (C. C. A. 3rd, 1946).

The Contract of Employment, if Construed as Making Applicable the Pennsylvania Workmen's Compensation Act, Would Be Unenforceable.

The Circuit Court of Appeals in its opinion recognized that "the rights of the parties in this case would be governed by the laws of Alabama." In addition to the reasons for reversing the judgment of the District Court, as given in the opinion of that Court, we point out that at the time of the injury and death of Duskin in Alabama, that State had in effect an Employers' Liability Act applicable to the case at bar, and by Alabama Code, 1940, Title 26, Section 329, a part of the Alabama Employers' Liability Act, it is provided:

> "No contract of employment . . . entered into by or on behalf of any employee . . . shall constitute any bar or defense to any action brought to recover damages for personal injuries to, or death of, such employee."

This statute expresses the public policy of the State of Alabama that a contract of employment, as in this case, which is alleged to establish a test of the employer's liability different from that provided by the laws of Alabama, is invalid.

Cf.:

Chicago, B. & Q. R. Co. v. McGuire, 219 U. S. 549 (1911);

Philadelphia, B. & W. R. Co. v. Schubert, 224 U. S. 603 (1912);

Alaska Packers Asso. v. Industrial Accident Commission, 294 U. S. 532 (1935).

See:

Standard Pipe Line Co. v. Burnett, 66 S. W. (2d) 637 (Ark., 1934);

Carl Hagenbeck & Great Wallace Show Co. v. Randall, 126 N. E. 501 (Ind., 1920);

American Radiator v. Rogge, 92 Atl. 85 (N. J., 1914).

CONCLUSION.

A correct result having been reached by the Circuit Court of Appeals and the questions presented not being of general importance, it is submitted that the petition for certiorari should be denied.

Respectfully submitted,

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